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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,736	10/30/2003	Patrick R. Lancaster III	02906.0357	6347
22852	7590	01/24/2007		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER	
			TRAN, KHOI H	
			ART UNIT	PAPER NUMBER
			3651	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/24/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/696,736	LANCASTER ET AL.	
	Examiner Khoi H. Tran	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-173 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 24-32,38,43-54,62,65-74,83,86 and 173 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 05/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 1-23,33-37,39-42,55-61,63,64,75-82,84,85 and 87-172.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, Species XIII, represented by claims 24-32, 38, 43-47, 48-54, 62, 65, 66, 67-74, 83, 86, and 173 in the reply filed on 11/20/2006 is acknowledged. The traversal is on the ground(s) that the subcombinations are overlap in scope and therefore, not restrictable. However, Applicant has failed to indicate for the record that the subcombinations and the Species are obvious variants. The subcombinations have been shown to be separately usable per examples given in the previous Restriction Requirement. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 24, 29, 46, 68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 24, 29, and 68, "the area" lacks antecedent basis. It is not distinct as to which area Applicant is referring.

In regards to claim 46, it is not distinct which "a loading zone" and "a palletizer" Applicant is referring. Positive identification of these elements are required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 are rejected under 35 U.S.C. 102(b) as being anticipated by Becicka et al. (U.S. Patent No. 5,098,254).

Becicka et al. '254 disclose method of building a load per claimed invention. The method comprises automatically moving products from an infeed area to a load building area (Figure 1). The method comprises defining desired area of a load to be filled with products using at least two of a height sensor 62, a length sensor 56/58, and a width sensor 64. The method comprises automatically filling the desired area with products and determining when the desired area is filled. The method comprises automatically repeating the moving and filling steps using a single logic sequence for at least two consecutive moving and depositing steps (Figure 1).

Becicka et al. '254 method comprises positioning at least one of the sensors to define respective length, width, and height of the desired area.

Becicka et al. '254 method comprises sensing the location of previously placed products and deposit new products on the previously placed products (Figure 1).

Becicka et al. '254 method comprises sensing the location of the pallet for at least the first filling cycle when the pallet is emptied.

Becicka et al. '254 method comprises setting a desired height of the load by positioning the height sensor 62 at appropriate predetermined level.

Becicka et al. '254 method comprises setting a desired length of the product load by positioning the length sensor 56/58.

Becicka et al. '254 method comprises sending sensing information from the sensors to a controller for automatically controlling the building of the load.

Becicka et al. '254 method comprises repeating the first logic sequence for at least two transporting cycles, i.e. two filled rows, and executing a second logic sequence in the controller for a different transporting cycle to provide interlocking pattern on the next layer (column 5, lines 29-34).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 32, 45, 51-53, 66, 72, 73, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becicka et al. (U.S. Patent No. 5,098,254).

In regards to claim 32, Becicka et al. '254 disclose method for building a load per claimed invention as explained above. However, it is silent as to the specifics of adjusting the length sensor 56/58 to define the length of the product load on the load building area. Nevertheless, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, using common engineering sense, to

have adjusted the Becicka et al. '254 length sensor 56/58 at any positions along the infeed/loading area to accommodate for different size product loads and pallets.

In regards to claims 45 and 66, Becicka et al. '254 disclose method for building a load per claimed invention as explained above. However, it is silent as to the specifics of the controller comprises of more than one processor. Nevertheless, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Becicka et al. '254 system with more than one processor because they facilitate another equivalent means for controlling the load building process. Using plural processors, instead of a single processor, for controlling an automatic system is commonly well known in the art.

In regards to claims 51 and 72, it is obvious that Becicka et al. '254 controller is programmable to accommodate for the loading of different size items on different layers of a single pallet load. For example, new products having half the size of previously loaded products could be placed on a next layer row having twice as many products.

In regards to claims 52, 53, 73 and 74, it is obvious that Becicka et al. '254 controller is programmable to accommodate for the loading of different size items on two different pallets. Each pallet comprises two layers of the same size products.

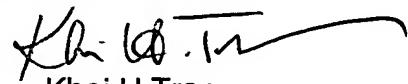
Conclusion

8. Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoi H Tran
Primary Examiner
Art Unit 3651

KHT
01/18/2007